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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	92078851
Party	Defendant Russell Road Food and Beverage, LLC
Correspondence address	RUSSELL ROAD FOOD AND BEVERAGE, LLC 3550 WEST QUAIL AVENUE LAS VEGAS, NV 89118 UNITED STATES Primary email: btarabichi@owenstarabichi.com No phone number provided
Submission	Answer
Filer's name	Bruno Tarabichi
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Date	02/22/2022
Attachments	RR Answer re CH3.pdf(120955 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Kimme Gardener and Michael Magrann,

Petitioners,

v.

Russell Road Food and Beverage, LLC,

Registrant.

Cancellation No. 92078851

U.S. Registration No. 5,124,571

Mark: CH3

**REGISTRANT RUSSELL ROAD FOOD AND BEVERAGE, LLC'S**

**ANSWER TO PETITION FOR CANCELLATION**

Registrant Russell Road Food and Beverage, LLC ("Registrant") hereby answers the Petition for Cancellation filed by Petitioners Kim Gardener and Michael Magrann ("Petitioners") as follows:

In response to the grounds for cancellation enumerated in Petitioners' Electronic System for Trademark Trials and Appeals ("ESTTA") Petition for Cancellation form, Registrant denies that there are any grounds to sustain the cancellation and deny that Petitioners own any mark(s) sufficient to constitute a basis for cancellation.

In response to the unnumbered introductory paragraph, Registrant denies that Petitioners will be damaged by the continued registration of U.S. Registration No. 5,124,571.

**FACTUAL BACKGROUND REGARDING PETITIONERS' CH3 MARK**

1. In response to paragraph 1, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1 and, therefore, denies each and every allegation in paragraph 1.

2. In response to paragraph 2, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 2 and, therefore, denies each and every allegation in paragraph 2.

3. In response to paragraph 3, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 3 and, therefore, denies each and every allegation in paragraph 3.

4. In response to paragraph 4, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 4 and, therefore, denies each and every allegation in paragraph 4.

5. In response to paragraph 5, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5 and, therefore, denies each and every allegation in paragraph 5.

6. In response to paragraph 6, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 6 and, therefore, denies each and every allegation in paragraph 6.

7. In response to paragraph 7, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 7 and, therefore, denies each and every allegation in paragraph 7.

**FACTUAL BACKGROUND REGARDING REGISTRANT  
AND THE REGISTRATION OF CH3**

8. In response to paragraph 8, Registrant admits the allegations in paragraph 8.

9. In response to paragraph 9, Registrant admits the allegations in paragraph 9.

**FIRST BASIS FOR CANCELLATION  
(Likelihood of Confusion)**

10. In response to paragraph 10, Registrant refers to its responses to the allegations in paragraphs 1-9 and incorporates them by reference as if set forth in full herein.

11. In response to paragraph 11, Registrant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 11 and, therefore, denies each and every allegation in paragraph 11.

12. In response to paragraph 12, Registrant denies each and every allegation in paragraph 12.

## **SECOND BASIS FOR CANCELLATION**

### **(False Suggestion of a Connection)**

13. In response to paragraph 13, Registrant refers to its responses to the allegations in paragraphs 1-12 and incorporates them by reference as if set forth in full herein.

14. In response to paragraph 14, Registrant denies each and every allegation in paragraph 14.

15. In response to paragraph 15, Registrant denies each and every allegation in paragraph 15.

16. In response to paragraph 16, Registrant denies each and every allegation in paragraph 16.

## **DAMAGE CAUSED TO PETITIONERS**

17. In response to paragraph 17, Registrant denies each and every allegation in paragraph 17.

In response to Petitioners' WHEREFORE and prayer for relief paragraph, Registrant denies that there is a basis to sustain the cancellation.

## **AFFIRMATIVE DEFENSES**

By way of further answer, Registrant alleges and asserts the following defenses in response to the allegations contained in the Petition for Cancellation. In this regard, Registrant undertakes the burden of proof only as to those defenses that are deemed affirmative defenses by law, regardless of how such defenses are denominated in the instant Answer. Registrant reserves the right to assert other affirmative defenses as this cancellation proceeds based on further discovery, legal research, or analysis that may supply additional facts or lend new meaning or clarification to Petitioners' claims that are not apparent on the face of the Petition for Cancellation.

FIRST AFFIRMATIVE DEFENSE  
NO INJURY OR DAMAGE

18. Petitioners' claims are barred, in whole or in part, because Petitioners have not and will not suffer any injury or damage from the continued registration of U.S. Registration No. 5,124,571.

SECOND AFFIRMATIVE DEFENSE  
ESTOPPEL

19. Petitioners' claims are barred, in whole or in part, by the doctrine of estoppel.

THIRD AFFIRMATIVE DEFENSE  
WAIVER

20. Petitioners' claims are barred, in whole or in part, by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE  
LACHES

21. Petitioners' claims are barred, in whole or in part, by the doctrine of laches.

WHEREFORE, Registrant request judgment as follows:

1. That the Petitioner for Cancellation be dismissed with prejudice;
2. That Registration No. 5,124,571 continue to be registered; and
3. That Registrant be granted further reasonable and appropriate relief.

Dated: February 22, 2022

Respectfully submitted,

/s/ Bruno Tarabichi

Bruno Tarabichi

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Attorneys for Registrant

Russell Road Food and Beverage, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the following document:

REGISTRANT RUSSELL ROAD FOOD AND BEVERAGE, LLC'S ANSWER TO  
PETITION FOR CANCELLATION

has been served on

Kimm Gardener  
2651 Tulane Avenue  
Long Beach, CA 90815  
[kgardener@kgb-worldwide.com](mailto:kgardener@kgb-worldwide.com)  
[mdanner@sheppardmullin.com](mailto:mdanner@sheppardmullin.com)

by email on February 22, 2022.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Dated: February 22, 2022

/s/ Bruno Tarabichi

Bruno Tarabichi